IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 164 of 1985
WITH
CROSS OBJECTIONS UNDER ORDER 41 RULE 22 C.P.C.

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPN.
Versus
JAGDISHCHANDRA BALKRUSHNA ACHARYA

Appearance:
1. First Appeal No. 164 of 1985
MR HARDIK C RAWAL for Petitioner No. 1
MR GAURANG H BHATT for Respondent No. 1
..... for Respondent No. 2

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/02/2003
ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This appeal under Section 110-D of the Motor Vehicles Act, is filed by the appellant-Gujarat State Road Transport Corporation against the award dated 27-2-1984, rendered in Motor Accident Claims Petition no.456/1982 by the Motor Accident Claims Tribunal, (Main) Surendranagar, partly allowing the claim petition awarding compensation of Rs.90,000/to the injured claimant.

2. The respondent-claimant being partly aggrieved with the impugned award has filed cross objections under Order 41, Rule 22, Civil Procedure Code, claiming enhancement in the compensation awarded by the Claims Tribunal.

3. On 14-8-1982, Jagdishchandra Balkrushna Acharya (claimant), was riding scooter no.GJP 3733 going from Halvad to Dhrangadhra with one Babulal Chhaganlal Pancholi as pillion rider. It is the say of the claimant that the scooter was being plied by him at a moderate speed and on the correct side of the road; that at about 10.45 a.m. when they were at a distance of about 3 Kms. away from Dhrangadhra, one ST bus bearing registration no. GRR 8354, driven by opponent no.2 in a rash and negligent manner, came from opposite direction. That the said ST bus dashed with the scooter of the claimant. The claimant fell down from the scooter and sustained injuries; that the ST bus was going from Ahmedabnad to Morbi; that because of the injury sustained in the said accident his right hand has become useless and an amount of Rs.1,50,000/- has been claimed in the claim petition. That the applicant also received injury on his cheek, and head and became unconscious on receipt of the injury. That he was initially taken to Civil Hospital at Dhrangadhra where he was given primary treatment and from there he was taken to Civil Hospital, Ahmedabad and remained as an indoor patient in the first instance, from 14-8-1982 to 25-9-1982. Indoor hospitalization was again required from 13-10-1982 to 2-11-1982. That skin grafting was required to be done and plaster applied at the injury site. He was also required to go for the follow up treatment.

3.1 In response to the notice issued by the Claims Tribunal, opponents nos.1 and 2 i.e. the Gujarat State Road Transport Corporation and the driver of the bus in question filed written statement and refuted the say of the petitioner, however, admitting that the driver was plying the ST bus bearing registration no.GRR 8354 of opponent no.1 in the course of employment. It is further

stated that the bus was being driven at a moderate speed, but because it had rained earlier there was mud on the shoulders (kuchha portion) of the road and when the bus had reached near the scooter, the claimant had taken the scooter off the road and the bus had nearly crossed the scooter i.e. half the body of the bus had passed the scooter; at that time, the claimant tried to take the scooter on the tar road but on account of mud on the road, the scooter had slipped and the claimant could not control the scooter as a result of which, the scooter fell down on the ground, collided with the rear portion of the bus and the claimant sustained injuries.

4. The claimant examined himself at Exh.21. Dr.Jitendra Girdharlal Sanghvi is examined at exh.139. Witness Karsan Moti is examined at exh.39. Witness Babulal Chhaganlal Pancholi is examined at Exh.143. The driver of the bus is examined at Exh.150. The Panchnama pertaining to the place of accident is at Exh.142. The discharge cards of the Civil Hospital, Ahmedabad is at Exh.164 and 165 respectively. The hospital papers of Civil Hospital, Dhrangadhra, suggesting injuries are at Exh.26. The disability certificate issued by Dr.Jitendra G. Sanghvi is at Exh.141. The X-ray pertaining to the right upper limb of the claimant is at Exh.153. The vouchers suggesting payments made by the petitioner are at Exhs.40 to 52 and 79, and notes of account is at Exh.154.

5. The Motor Accident Claims Tribunal, appreciating the oral as well as documentary evidence partly allowed the claim petition and awarded Rs.90,000/- to the injured claimant.

6. We have heard the submissions advanced by Mr. H.C. Raval, learned Advocate for the appellant-Gujarat State Road Transport Corporation and Mr.Gaurang Bhatt, learned Advocate for the respondent-claimant in the appeal as well as the cross objections.

7. The First Appeal no.164/1985 has been filed by the Gujarat State Road Transport Corporation, to which claimant-Jagdishchandra Balkrushna Acharya has filed cross objections, claiming enhancement in the compensation awarded by the impugned award, both assailing the impugned award , by filing this appeal as well as cross objections.

8. It is not disputed that respondent no.2 was driving ST bus bearing no.GRR 8354 in the course of employment of the appellant-Corporation on Ahmedabad

Morbi Road and respondent no.1 (claimant) was riding scooter no.GJP 3733 from Halvad to Dhrangadhra. It is also not disputed that there was a collision between the bus and the scooter and that the claimant sustained injuries. It is also not in dispute that one Babulal Chhaganlal Pancholi was sitting on the pillion seat of the said scooter when the accident occurred around 10.45 a.m. on 14-8-1982.

9. We have perused the record and proceedings of the case called from the concerned Claims Tribunal. We have considered the oral as well as documentary evidence on record.

10. Exh.152 is the Panchnama pertaining to the place of accident. Perusal of the same suggests that the road from Dhrangadhra to Halvad is East-West. North-South width of the tar-road is 12 ft., with 3 ft. wide shoulders (kuchha road) on both the sides of the tar-road. S.T. bus bearing registration no.GRR 8354 facing Halvad was found stopped at a distance of 108 ft. from the scooter, whereas the scooter bearing no.GJP 3733 was found lying on the kuchha road facing Dhrangadhra. It is also suggested from the Panchnama that at a distance of 5 ft. from where the scooter was found lying, there were marks of blood.

11. Mr. Raval, learned Advocate for the petitioner referring to the deposition of the driver and Panchnama attempted to assail the finding of sole negligence of the driver. It will be seen from the Panchnama that the width of the road is 12 ft. at the relevant place. Both the vehicles were coming from opposite direction. Even after the collision with the scooter, the bus is found at a distance of 108 ft. It has also come in evidence that before the accident, it had rained and there was mud. Since, the opponent no.2-the driver was in charge of a heavy vehicle carrying passengers, seeing the two wheeler coming from the opposite direction with mud on the road, is expected to exercise greater degree of care and caution. It is suggested from the Panchnama that the driver of the bus has not taken sufficient care to avoid the accident which he could have, had he been on his side of the road. Having regard to the oral as well as documentary evidence, especially, the evidence of the claimant, the evidence of the driver and the Panchnama, the finding of sole negligence on the part of the driver of the offending vehicle, arrived at on appreciation of evidence by the Claims Tribunal, in our opinion. does not call for any interference and the same does not deserve to be disturbed.

12. Coming to the quantum , for which the claimants have filed cross objections under Order 41, Rule 22, Civil Procedure Code, the evidence on record suggest that the claimant was having a business of transport and had purchased one truck for the said business. The claimant, as suggested from the evidence was initially given primary treatment in Civil Hospital, Dhrangadhra, and then, was shifted to Civil Hospital, Ahmedabad. The discharge card Exh.64 suggests hospitalisation for a period from 14-8-1982 to 25-9-1982 while the discharge card Exh.65 suggests hospitalisation for a period from 13-10-1982 to 2-11-1982. The injury certificate Exh.26 issued by the Civil Hospital, Dhrangadhra, suggests the injuries received by the claimant. The claimant suffered fracture of shaft middle right humerus, over and above the crush injury.

13. The evidence of Dr.Jitendra G.Sanghvi Exh.139 suggest permanent partial disability suffered by the claimant and the permanent partial disability of the right upper limb is assessed at 65% vide Exh.141. It will be seen that the total period of hospitalisation is two months and three days. Considering the nature of injury and the prolonged hospitalisation, the Tribunal under the head of pain, shock and suffering, has awarded Rs.15,000/-. In our opinion, the amount of compensation of Rs.15,000/- awarded under the head of pain, shock and suffering, cannot be regarded, in any manner, inadequate or on the lower side.

14. It has been submitted by Mr. Gaurang Bhatt, learned Advocate for the claimant that account books Exh.145 of Pancholi Salt Industries has not been taken into consideration by the Claims Tribunal for the purpose of assessing the income of the claimant. Admittedly, there is no evidence to suggest as to who has written the books of account Exh.145 and none is examined from Pancholi Salt Industry. Again, Exh.145 does not pertain to the business of the claimant, but it pertains to the business of Pancholi Salt Industries. There is no evidence to suggest whether books of account Exh.145 is written in the regular course of business and under whose instructions and as to who is the author of the same. There is absolutely no evidence to corroborate the entries contained in Exh.145, and there is absolutely no evidence on the basis of which entries at Exh.145 can be accepted for the purpose of computing the income of the claimant. It has been further submitted by Mr. Bhatt that the claimant was spending about Rs.2500/-per month by way of salary to the driver, purchase of diesel etc..

The Claims Tribunal has evaluated the income of the claimant to be Rs.20,000/-per year from the business of transport. The claimant has examined Bhikubhai Tapubhai at Exh.75 and Harjibhai Punjabhai at Exh.32 to suggest the payment to these persons as the drivers at the rate of Rs.400/-per month and Rs.300/-per month respectively. If the salary as stated by the witnesses Exh.75 and Exh.32 are paid and diesel etc. purchased, then, alteast there would be some evidence in the form of notebook containing the expenses incurred by the claimant for his transport business. In our opinion, not much reliance can be placed on vouchers Exhs.40 to 52 and 79 and Exhs. 77, 78, 80. Simply on the basis of said vouchers, it cannot be said that the drivers were paid the salary as stated by the witnesses Exhs.39, 75 and 32 and purchases made for the business of transport. There should be some evidence to suggest the income and expenditure of the claimant from the business of transport. Under the circumstances, we are inclined to agree with the finding arrived at by the Claims Tribunal on appreciation of evidence evaluating the income of Rs.20,000/-per year for the transport business.

14.1 The Claims Tribunal has awarded Rs.5000/- by way of loss of income during the period of hospitalisation and thereafter. As seen above, the income, on appreciation of evidence, has been evaluated at Rs.20,000/-per year. Considering the period of hospitalisation, and thereafter rest an amount of Rs.5000/- by way of loss of income is just and proper and does not call for any enhancement.

15. It is submitted by Mr. Bhatt that the age of injured at the time of accident is 42 years and proper multiplier would be atleast 12 years, whereas the Tribunal has applied 8 years multiplier as purchase factor. In our opinion, looking to the age of the injured the proper multiplier would be 12 years purchase factor rather than 8 years multiplier adopted by the Claims Tribunal and on this count the Tribunal can be said to have erred to this extent.

16. Appreciating the evidence of Dr.Jitendra G.Sanghvi Exh.139 and the disability certificate Exh.141, the permanent partial disability of the right upper limb is assessed at 65%. There is no evidence to suggest as to what would be the percentage of permanent partial disability in relation to body as a whole. However, the permanent partial disability in relation to body as a whole would be 32 1/2% i.e.33% of the right upper limb. The difference on this score can be adjusted under other

heads.Thus the loss of income per month as arrived at by the Claims Tribunal at Rs.500/-per month, which would come to Rs.6000/-per year and applying the multiplier of 12, the loss of income would come to Rs.72,000/- which would suggest the enhanced compensation of Rs.24,000/-, and therefore, the cross objections filed by the claimant would be required to be partly allowed to this extent.

17. On considering the evidence on record, we are of the opinion that the finding of negligence and the income evaluated by the Claims Tribunal does not call for interference and the impugned award is liable to be interfered with only to the extent of application of multiplier to the extent that the proper multiplier would be 12 years purchase factor looking to the age of the injured rather than multiplier of 8, adopted by the Claims Tribunal. The findings arrived at by the learned Claims Tribunal except adoption of multiplier is consistent with the evidence on record, the legal position, deserves to be confirmed.

18. In the result, the appeal fails and is dismissed whereas the cross objections filed under Order 41, Rule 22 Civil Procedure Code, by the claimant are partly allowed to the extent of adopting multiplier of 12 years purchase factor instead of 8 years adopted by the Claims Tribunal in the impugned award and the compensation awarded to the claimant is enhanced by Rs.24,000/- with 6% interest from the date of the application till realisation of the amount. The additional/enhanced compensation of Rs.24,000/-with 6% interest as above shall be deposited by the appellant-the Gujarat State Road Transport Corporation within three months from today. The claimant shall approach the Claims Tribunal for the payment of the amount invested in Fixed Deposit pursuant to the impugned award. No orders as to costs in the appeal as well as the cross objections.

(N.G.Nandi,J.)

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